



**JUDICIARY
IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
PERSONAL INJURY CASE NO. 608 OF 2011**



BETWEEN

SOSTEN ERNEST PLAINTIFF

-AND-

FARMERS WORLD LIMITED DEFENDANT

CORAM: THE HONOURABLE JUSTICE KENYATTA NYIRENDA

Mrs. Chijere, of counsel, for the Plaintiff

Mr. Theu, of counsel, for the Defendant

Ms. Annie Mpasu, Court Clerk

JUDGEMENT

Kenyatta Nyirenda, J.

This is the Plaintiff’s action for damages for assault and battery that led to the removal of his eye following being beaten by the defendant’s guards when he was caught stealing in the defendant’s farm in Machinga. The Defendant denies liability.

In terms of the Statement of Claim, the Plaintiff was at all material times a resident of Machinga District. The Plaintiff alleges that, on 9th July 2010, he was cutting down trees for firewood without permission at the Defendant’s estate when the Defendant’s guards apprehended him. It is further pleaded that the Plaintiff did not offer any resistance to the arrest but, nonetheless, the Defendant’s servants or agents acting in the in course of their employment wilfully or negligently assaulted the Plaintiff severely and hit him on the eye leading to the rapture of his right eye.

The injuries suffered by the Plaintiff have been particularized as a ruptured right eye which was removed at the hospital. In conclusion, the Plaintiff claims (a)



damages for pain and suffering and loss of amenities, (b) damages for loss of earnings and earning capacity, and (c) costs of the action.

The Defendant filed a defence wherein it admits that the Plaintiff was at all material times a resident of Machinga District and that on 9th July, 2010 he was cutting down trees for firewood without permission at the Defendant's estate when the Defendant's guards apprehended him. Save for this admission, all other allegations of fact contained in the statement of claim have been traversed. It is further averred that (a) on the material day, the Plaintiff attempted to run away from the Defendant's servants or agents, (b) in the course of running away, the Plaintiff stumbled and fell on his own tools thereby injuring himself and (c) the Defendant's servants or agents took the injured Plaintiff to hospital by using the Defendant's means and resources.

The Plaintiff called one witness who was the Plaintiff himself. The Plaintiff adopted his witness statement and this constituted his evidence in chief. The material part of the witness statement is reproduced below:

- “2. *In the morning of 9th July 2010, I went into Demetar forest to make some charcoal and the land belongs to the defendant.*
3. *Whilst there, I saw a group of guards working for Demetar who started chasing me. There were 10 or 11 of them. These were the defendants servants or agents and they were acting in the course of employment.*
4. *As I was running away, I saw another guard in front of me. He threw a button stick at me. It hit me on the eye. I felt down injured. My eye was bleeding badly.*
5. *The whole group descended on me and handcuffed me.*
6. *They took me to Liwonde Police and the police took me to Liwonde hospital.*
7. *The hospital referred me to QECH where my eye was removed.”*

The Plaintiff tendered his Medical Report and it was marked as Exhibit P1.

In cross examination, the Plaintiff stated that when he saw the guards, he started running away and they chased after him. In the course of running away, he fell down. The following Q and A ensued regarding the alleged use of a baton stick:

- Q: If you were running away, how sure are you that you were hit by a baton stick?

